

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

DEAN CORREN, the VERMONT
PROGRESSIVE PARTY, STEVEN
HINGTGEN, RICHARD KEMP,
and MARJORIE POWER,

Plaintiffs,

DAVID ZUCKERMAN,

Intervenor/Plaintiff,

V.

Case No. 2:15-cv-58

WILLIAM SORRELL, Vermont
Attorney General in his
official capacity, and
JAMES CONDOS, Vermont
Secretary of State in his
official capacity,

Defendants.

ORDER

Pending before the Court is Plaintiffs' emergency motion to stay the appeal period in this case. An Opinion and Order dismissing the case without prejudice issued on March 9, 2016. Judgment issued on March 11, 2016. On March 21, 2016, Plaintiffs timely moved the Court to award attorneys' fees and related costs pursuant to Fed. R. Civ. P. 54(d). Plaintiffs now ask the Court to stay the time for taking an appeal until after the attorneys' fees motion is decided.

The Federal Rules of Appellate Procedure require that a notice of appeal be filed "with the district clerk within 30 days after the judgment or order appealed from is entered." Fed. R.

App. P. 4(a)(1)(A). If, however, "a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59." Fed. R. Civ. P. 58(e). Federal Rule of Appellate Procedure 4(a)(4) provides that the appeal period runs from the entry of an order disposing of the last remaining Rule 59 motion. Fed. R. App. P. 4(A)(v). Rule 4(a)(4) also provides that appeal period runs from the entry of an order disposing of a motion "for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58." Fed. R. App. P. 4(A)(ii).

The purpose of Rule 58(e) is to increase judicial efficiency by enabling an appellate court to consider an appeal related to a fee award and an appeal related to the merits at the same time. Fed. R. Civ. P. 58(e) advisory committee's notes (1993 Amendments); see also 15B Charles Allen Wright, Arthur R. Miller, & Edward H. Cooper, Federal Practice and Procedure § 3915.6 (2d ed. & Supp. 2011). Accordingly, if the court grants Plaintiffs' motion, the period for filing a notice of appeal of the judgment will not begin to run until - at the earliest, assuming no other post-judgment motions are filed - the court disposes of the motion for attorneys' fees and costs.

Plaintiffs' motion for attorneys' fees and costs was timely

filed, and its motion to stay the time for appeal was filed before a notice of appeal was filed or became effective. Further, it may indeed be "more efficient to decide fee questions before an appeal is taken" in this case, "so that appeals relating to the fee award can be heard at the same time as appeals relating to the merits of the case." Fed. R. Civ. P. 58(e) advisory committee's notes (1993 Amendments). Plaintiffs' motion (ECF No. 61) is therefore **granted**, and it is hereby **ordered** that the motion shall be treated as a timely motion under Rule 59, pursuant to Federal Rule of Civil Procedure 58(e) and Federal Rule of Appellate Procedure 4(a)(4).

DATED at Burlington, in the District of Vermont, this 4th day of April, 2016.

/s/ William K. Sessions III
William K. Sessions III
District Court Judge